

Tax is deemed to be erroneously paid by a retailer when the manufacturer of a motor vehicle sold by the retailer accepts the return of that automobile and refunds to the purchaser the purchase price of the vehicle, as provided in Section 3 of the New Vehicle Buyer Protection Act, 815 ILCS 380/3. See Ill. Adm. Code 130.1501. (This is a GIL).

July 8, 2004

Dear Xxxxx:

This letter is in response to your letter received May 4, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

In May 2003, my wife and I purchased a new 2003 VEHICLE. At the time of the purchase we paid the state sales tax of 6.25% on our new VEHICLE.

In the time since then, COMPANY has determined that our VEHICLE is defective beyond repair. There is excessive corrosion on the undercarriage that they cannot repair. This has resulted in a warranty/liability issue for COMAPNY in which they are in the process of repurchasing the VEHICLE from us.

Let me elaborate, we are not getting a replacement vehicle because the parties could not agree on a replacement vehicle and price on this matter. COMPANY's untimely handling of this matter, as well as our dissatisfaction with the dealership, has forced us to request a repurchase of the vehicle so that we can take our business to another COMPANY dealership or possibly a COMPANY2 supplier.

This has brought to light some confusing and illogical state sales tax issues for us. As we understand it, if we acquire a replacement VEHICLE for our defective one, we can receive a tax refund from the dealer for the defective vehicle to pay the new tax on the replacement vehicle, while the dealership applies for a credit of the sales tax they paid us. On the other hand, if COMPANY, the manufacturer, repurchases our defective

VEHICLE and we elect to take our business to another dealer or even change make and model (ex. COMPANY2) we cannot recover the cost of sales tax we paid because manufacturers cannot recover sales tax from the state of Illinois, even though we are returning the vehicle to the same place and dealership where we purchased and paid sales tax on the vehicle.

In conclusion, General Motors is repurchasing our VEHICLE through one of their dealerships because of a warranty/liability issue. Now, we are without a vehicle to use for which we have paid sales tax on and currently, we are in the process of buying another vehicle for which we will **AGAIN** incur sales tax.

Our question to you is: How does the State of Illinois sales tax apply to a manufacturer warranty and liability after the sale?

In addition, can you please explain to us how the tax laws apply in regards to returning a defective new vehicle for manufacturer repurchase and in turn buying another like vehicle from a different dealer or company?

Your response to this matter, as well as any information or guidance, would be greatly appreciated.

DEPARTMENT'S RESPONSE:

When an item of tangible personal property is sold at retail, an express warranty from the manufacturer is often included in the selling price. This express warranty obligates the manufacturer to correct defects in materials and workmanship during a specified timeframe. When repairs are made under the terms of an express warranty, no tax is due and this is true whether the manufacturer makes the repairs or whether the manufacturer pays someone else to make the repairs. This is because the warranty (and the work to be done under the warranty) was included as part of the retail selling price of the item and, as such, was subject to Retailers' Occupation Tax and Use Tax when the item was sold at retail. See subsection (b) of 86 Ill. Adm. Code 140.141.

Extended warranties are contracts to provide repairs for a particular item for a stated period of time after a manufacturer's express warranty has expired. An extended warranty is not included in the selling price of the item covered by the extended warranty and, for that reason, the selling price of the extended warranty is not subject to Retailers' Occupation Tax and Use Tax liability when the item is sold at retail. However, tangible personal property transferred incident to the completion of an extended warranty will result in Use Tax liability by a servicemen based on the cost price of that tangible personal property. See 86 Ill. Adm. Code 140.301(b)(3) and 86 Ill. Adm. Code 140.141(b).

Where a taxpayer under the Retailers' Occupation Tax Act pays to the Department an amount of tax or penalty or interest not due under the provisions of the Act, either as the result of a mistake of fact or an error of law, such taxpayer may file a claim for credit with the Department. Beginning August 17, 1995, tax is deemed to be erroneously paid by a retailer when the manufacturer of a motor vehicle sold by the retailer accepts the return of that automobile and refunds to the purchaser the purchase price of the vehicle, as provided in Section 3 of the New Vehicle Buyer Protection Act, 815 ILCS 380/3. See 86 Ill. Adm. Code 130.1501(a)(1).

The claim is limited to taxes applicable to the purchase price of the automobile refunded to the consumer, which includes all collateral charges required to be included in the sales tax calculation (e.g., documentary fees), but does not include any reasonable allowance for consumer use of the

automobile deducted from the purchase price by the manufacturer. Retailers filing such claims must comply with all requirements of 86 Ill. Adm. Code 130.1501.

If the VEHICLE was accepted by the dealer as a return under the New Vehicle Buyer Protection Act, then you may seek a refund from the retailer of the taxes you paid to that retailer. The retailer may then file a claim for credit with the Department as described above.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk